

REMARKS

Claims 1-32 are pending in the application.

Claims 1-32 have been rejected.

Claims 1, 13, 23, and 28 have been amended. Support for the amendments can be found in at least paragraphs [0033]-[0034] of Applicants' Specification. No new matter is added.

Applicants thank the Examiner for the telephonic interview held on January 22, 2010.

*Rejection of Claims under 35 U.S.C. § 112*

Claims 1, 13, 23 and 28 are rejected under 35 U.S.C. § 112, first paragraph, for allegedly being incomplete for omitting essential elements. Applicants respectfully traverse this rejection. However, in the interests of progressing prosecution, Applicants have amended Claims 1, 13, 23, and 28 to address the Examiner's concerns. Thus, Applicants respectfully request that the rejection be withdrawn.

*Rejection of Claims under 35 U.S.C. § 101*

Regarding claims 23-27, claims 23 recites a "machine-readable storage medium." Regarding claims 28-32 these claims recite a "computer-readable storage medium." The Office Action states that in the absence of any modifying disclosure of this limitation in the specification, the Examiner interprets the terms 'machine-readable storage medium' and 'computer-readable storage medium' as limited to statutory embodiments as required under the terms of 35 U.S.C. 101." Applicants agree that these claims recite statutory subject matter. Accordingly, Applicants respectfully request that this rejection be withdrawn.

*Rejection of Claims under 35 U.S.C. § 103(a)*

Claims 1-36 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent 7,133,884 issued to Murley et al. (“Murley”) further in view of U.S. Patent Publication No. 20050021487 issued to Verma et al. (“Verma”) and U.S. Patent Publication No. 20030177135 by Lechowicz et al. (“Lechowicz”). Applicants respectfully traverse this rejection. Applicants respectfully submit that Murley, Verma, and Lechowicz, taken alone or on combination, fail to disclose all elements of Applicants’ claims.

Specifically, Applicants respectfully submit that the cited portions of Murley, Verma, and Lechowicz fail to disclose a speculative structure that is a speculative arrangement of database components intended to match an actual structure of a database, though the actual structure of the database is unknown, as recited by amended claim 1. As an initial matter, support for this amendment is found at ¶ [0033] of Applicants’ Specification. The Office Action cites Murley’s disclosure of a current snapshot of a database as purportedly disclosing a speculative structure of a database. Office Action, p. 4. Applicants respectfully submit that Murley’s current snapshot is not comparable to the claimed speculative structure. One way in which the two differ is that unlike the claimed speculative structure, the cited portions of Murley fail to disclose that the current snapshot includes a speculative arrangement of components.

In fact, the Office Action appears to completely ignore the term “speculative” in claim 1, as Murley fails to disclose anything speculative about the current snapshot. Applicants respectfully submit this is impermissible and that all words in a claim must be considered. *See* MPEP § 2143.03. The term speculative, given its broadest possible meaning, includes an element of uncertainty. In the context of claim 1, the uncertainty concerns the structure of a database, thus the determined structure is speculative. The speculative structure, by definition, relates to uncertainty concerning the database structure, as reflected in the claim element that explicitly recites that the actual structure of the database is unknown at the time that the speculative structure is determined. The Office Action fails to point to any such uncertainty in the cited sections of Murley (or Verma or Lechowicz, for that matter). Applicants find this unsurprising as Murley is

directed to consistency in point-in-time (PIT) copies, and is not directed to determining a speculative structure of a database.

Murley fails to disclose any need for such teachings as the cited portions of Murley fail to disclose any databases with unknown actual structures. Furthermore, it makes no sense to state that Murley's current snapshot is intended to match an actual structure of a database, or that the actual structure of the database is unknown, as Murley's current snapshot is a reflection of the actual structure of the database, and the actual structure of the database is known. Accordingly, Murley fails to disclose any need to speculate as to the structure of the database. Applicants note that neither Verma nor Lechowicz is cited as purportedly disclosing such features and respectfully submit that Verma and Lechowicz in fact fail to do so.

Applicants respectfully submit that the cited portions of Murley, Verma, and Lechowicz also fail to disclose detecting whether a speculative structure of a database matches the actual structure of the database, where the detecting comprises comparing restored data with original data, the restored data comprises data from a backup copy of the original data, and the backup copy was formed using the speculative structure, as recited by amended claim 1. As an initial matter, support for this amendment is found at ¶ [0034] of Applicants' Specification. It follows from the failure of the cited references to disclose a speculative structure of a database that the references also must fail to disclose detecting whether such structure matches an actual structure of a database. It also follows that the cited references necessarily fail to disclose the particular method of performing such a detection.

Applicants respectfully submit that the cited portions of Murley, Verma, and Lechowicz also fail to disclose selecting a speculative structure from among a plurality of predefined database structures. Lechowicz discloses selecting data elements of a file to be imported. Lechowicz, ¶ [0045]. Applicants respectfully submit that these data elements are not comparable to the claimed predefined database structures. The cited portions of Lechowicz are directed to customizing which particular information is to be imported. *Id.* Applicants respectfully submit that this customization is teaches away from the claimed act of selecting from among a set of predefined structures. Pre-defined, as recited by

claim 1, is not compatible with the user based selecting disclosed by the cited portions of Lechowicz. In fact, the process disclosed by the cited portions of Lechowicz is a process of pre-defining. *Id.* Clearly, selecting a pre-defined data structure is not the same as pre-defining a group of data to be imported. Even if the two could be compared, which Applicants maintain is not the case, Lechowicz suffers from the same infirmity as discussed above with respect to Murley. That is, the cited portions of Lechowicz fail to disclose any cognizance of the concept of speculation, as is inextricably included in the term speculative structure.

For at least the foregoing reasons, Applicants respectfully request the Examiner's reconsideration and withdrawal of the rejections to claim 1, as well as claims 13, 23, and 29, which include substantially similar elements, and all claims depending from these claims, and an indication of the allowability of same.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned.

A one-month extension of time under 37 C.F.R. § 1.136(a) is required in order for this submission to be considered timely. Applicant hereby petitions for such extension. Applicant also hereby authorizes that any fees due for such extension or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to Deposit Account 502306.

Respectfully submitted,

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